

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

KROFF CHEMICAL COMPANY, INC.,)	Civil Action
)	
Plaintiff,)	No. <u>3:16-cv-24</u>
)	
v.)	
)	
ENVIROMINE, INC.,)	<u>Electronically Filed</u>
)	
Defendant.)	JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Kroff Chemical Company, Inc. (“Kroff”), through its counsel, hereby alleges the following for its Complaint against Defendant Enviromine, Inc. (“Enviromine”):

1. This is a civil action for the infringement of United States Patent No. 7,115,201 entitled “Method of Treating Mine Drainage” (the ’201 patent).

2. Kroff has a principal place of business at 1 North Shore Center, Suite 450, 12 Federal Street, Pittsburgh, Pennsylvania 15212.

3. Enviromine is a West Virginia Corporation having a place of business at 166 Commerce Drive, Stoystown, Pennsylvania 15216. On information and belief, Enviromine also has a place of business at 4332 1st Avenue, Nitro, West Virginia 25143.

PERSONAL JURISDICTION AND VENUE

4. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

5. Venue is proper under 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b).

6. Enviromine has a regular and established place of business within this judicial district.

7. Enviromine has transacted business in this Commonwealth on a substantial and continuous basis and particularly in this judicial district.

8. Enviromine has contracted to sell product in this Commonwealth and this judicial district.

9. Enviromine has caused harm in this judicial district by its acts of patent infringement both inside and outside of this judicial district.

PATENT INFRINGEMENT IN VIOLATION OF 35 U.S.C. § 271

10. Kroff repeats and re-alleges the averments contained in paragraphs 1 through 9 of this Complaint as if fully stated herein.

11. This is a claim for the infringement of the '201 patent, a true and correct copy of which is attached as Exhibit A hereto.

12. The '201 patent and its claims relate generally to methods of inhibiting precipitation of calcium salt and metal oxide and/or metal hydroxide from hard mine drainage water through the addition of a sufficient level of a scale control agent.

13. Kroff is the owner, by assignment, of the '201 patent which was duly and lawfully issued by the United States Patent and Trademark Office on October 3, 2006.

14. Enviromine is directly infringing, contributorily infringing, and inducing the infringement of the '201 patent. Enviromine will continue to infringe the '201 patent unless enjoined by this Court.

15. Enviromine is manufacturing, using, selling and/or offering to sell scale control agents designed to inhibit precipitation of calcium salt and metal oxide and/or metal hydroxide from hard mine drainage water, including at least the scale control agent sold and marketed under the tradename CF-36X ("Enviromine Scale Control Agents").

16. Use of the Enviromine Scale Control Agents in their ordinary and intended way results in infringement of at least claim 1 of the '201 patent under 35 U.S.C. § 271.

17. Upon information and belief, the Enviromine Scale Control Agents, including CF-36X, each constitutes a scale control agent falling into at least one of the categories of: polymeric scale control agents, water-soluble polycarboxylates, phosphonates, organic phosphates, organic polyphosphates, and sulfonates as those terms are used in at least claim 1 of the '201 patent.

18. Adding a sufficient level of an Enviromine Scale Control Agent to hard mine drainage water having a pH of from 4.5 to 10, calcium hardness greater than 100 mg/l of Ca^{+2} as calcium carbonate, alkalinity greater than 100 mg/l as calcium carbonate, and one or more metal ions or metal salts selected from the group consisting of iron, copper, zinc, lead, mercury, cadmium, arsenic, barium, selenium, silver, chromium, aluminum, manganese, nickel, cobalt, uranium, and antimony meets all of the limitations of at least claim 1 of the '201 patent.

19. Upon information and belief, during the development and testing of the Enviromine Scale Control Agents, including CF-36X, Enviromine itself or through another entity acting under its direction or control added an Enviromine Scale Control Agent to hard mine drainage water having a pH of from 4.5 to 10, calcium hardness greater than 100 mg/l of Ca^{+2} as calcium carbonate, alkalinity greater than 100 mg/l as calcium carbonate, and one or more metal ions or metal salts selected from the group consisting of iron, copper, zinc, lead, mercury, cadmium, arsenic, barium, selenium, silver, chromium, aluminum, manganese, nickel, cobalt, uranium, and antimony and, in doing so, directly infringed at least claim 1 of the '201 patent by performing each of the steps recited therein.

20. Kroff manufactures and sells scale control agents which are intended to be used, and are used, to practice the '201 patent ("Kroff Scale Control Agents").

21. Kroff has published marketing materials that describe the Kroff Scale Control Agents manufactured and sold by Kroff as "patented technology."

22. Kroff is the assignee of record of approximately ten (10) issued United States patents.

23. Kroff previously filed suit against Zinkan Enterprises, Inc. for infringement of the '201 patent in this district.

24. Kroff has published materials to the industry that include notifications of the existence of the '201 patent.

25. Environmine has observed Kroff Scale Control Agents being used to treat hard mine drainage water.

26. Upon information and belief, on at least one occasion, Enviromine has removed a tote containing a Kroff Scale Control Agent from a hard mine drainage water treatment site, transferred the tote containing the Kroff Scale Control Agent to another hard mine drainage water treatment site, and used the Kroff Scale Control Agent to treat hard mine drainage water at this second site. More particularly, it is believed, and therefore averred, that Enviromine removed the tote from a Patriot/Bim site and used the tote at a Patriot/Harris site.

27. Upon information and belief, in August 2015, Environmine's lead sales representative, Mike Murphy, was informed of the '201 patent and its applicability to hard mine drainage water scale control by Brian Dalton of Zinkan Enterprises.

28. Upon information and belief, Enviromine is aware of the '201 patent and that adding an Enviromine Scale Control Agent to hard mine drainage water will infringe at least claim 1 of the '201 patent. To the extent Enviromine is not aware of the '201 patent or that adding an Enviromine Scale Control Agent to hard mine drainage water will infringe at least claim 1 of the '201 patent, Enviromine has remained willfully blind to these facts by intentionally failing to investigate the existence of the '201 patent or its scope despite knowledge

of Kroff Scale Control Agents, knowledge of the intended use of the Kroff Scale Control Agents, and knowledge that Kroff considers the Kroff Scale Control Agents to be patented technology.

29. Upon information and belief, Enviromine is aware that its customers add Enviromine Scale Control Agents, including CF-36X, to hard mine drainage water having a pH of from 4.5 to 10, calcium hardness greater than 100 mg/l of Ca^{+2} as calcium carbonate, alkalinity greater than 100 mg/l as calcium carbonate, and one or more metal ions or metal salts selected from the group consisting of iron, copper, zinc, lead, mercury, cadmium, arsenic, barium, selenium, silver, chromium, aluminum, manganese, nickel, cobalt, uranium, and antimony and, in doing so, directly infringe at least claim 1 of the '201 patent.

30. Upon information and belief, Enviromine instructs its customers to add the Enviromine Scale Control Agents, including CF-36X, to hard mine drainage water.

31. Upon information and belief, Enviromine has actively induced and continues to actively induce this infringement without authority or license from Kroff in violation of 35 U.S.C. § 271(b). For example, Enviromine has been and continues to actively induce this infringing activity by encouraging and instructing its customers to purchase and add Enviromine Scale Control Agents to hard mine drainage water so as to directly infringe the '201 patent. By encouraging and instructing its customers to add Enviromine Scale Control Agents to hard mine drainage water knowing that this use will directly infringe the '201 patent, or remaining willfully blind to this fact, Enviromine specifically intends to cause direct infringement of the '201 patent.

32. On information and belief, Enviromine has been aware, or has remained willfully blind to the fact, that adding an Enviromine Scale Control Agent to hard mine drainage water will result in the direct infringement of at least claim 1 of the '201 Patent. Despite this

knowledge, Enviromine has encouraged and continues to encourage its customers to add Enviromine Scale Control Agents to hard mine drainage water.

33. In manufacturing and selling Enviromine Scale Control Agents and promoting the use of the Enviromine Scale Control Agents to treat hard mine drainage water, Enviromine has contributed to the infringement of the '201 patent without authority or license from Kroff in violation of 35 U.S.C. § 271(c). The Enviromine Scale Control Agents have no substantial non-infringing use other than to be added to hard mine drainage water so as to inhibit the precipitation of calcium salt and metal oxide and/or metal hydroxide from hard mine drainage water in violation of at least claim 1 of the '201 patent.

7. Enviromine's activities in infringing the '201 patent are willful and wanton, constituting willful infringement of such United States Patent under 35 U.S.C. § 284.

8. Kroff has been irreparably damaged and will continue to be irreparably damaged by reason of Enviromine's infringement of the '201 patent unless this Court restrains the infringing acts of Enviromine. Kroff is without an adequate remedy at law.

WHEREFORE, Kroff prays:

A. that Enviromine, its officers, employees, agents, and those persons in active participation with them be permanently enjoined from infringing United States Patent No. 7,115,201;

B. that a decree be entered adjudging that Enviromine infringed United States Patent No. 7,115,201 and that such infringement was willful;

C. that Enviromine be ordered to pay damages to Kroff pursuant to 35 U.S.C. § 284, including interest from the dates of infringement, resulting from Enviromine's infringement of United States Patent No. 7,115,201;

D. that Enviromine be ordered to pay to Kroff treble damages pursuant to 35 U.S.C. § 284, resulting from Enviromine's willful infringement of United States Patent No. 7,115,201;

E. that Kroff be awarded its costs of this action and reasonable attorneys' fees pursuant to 35 U.S.C. § 284 and 285; and

F. that Kroff be awarded such further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Kroff hereby demands a trial by jury for all issues triable by a jury.

Respectfully submitted,

THE WEBB LAW FIRM

Dated: January 20, 2016

s/ Kent E. Baldauf, Jr.
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